

TAM:SRC:mel

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

|                                |   |                      |
|--------------------------------|---|----------------------|
| DOUGLAS HENRY THORNTON,        | : |                      |
| Plaintiff                      | : | No. 1:CV-00-1590     |
|                                | : |                      |
| v.                             | : | (Kane, J.)           |
|                                | : |                      |
| MR. LINDSEY, Associate Warden, | : |                      |
| et al.,                        | : | Filed Electronically |
| Defendants                     | : |                      |

DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME

Defendants request the Court for a thirty-day enlargement of time, pursuant to Fed. R. Civ. P. 6(b), to respond to plaintiff's interrogatories served September 22, 2003. Defendants state the following in support thereof:

1. Plaintiff is Douglas Henry Thornton, an inmate incarcerated at the Allenwood United States Penitentiary in White Deer, Pennsylvania.

2. On September 11, 2000, Thornton filed a complaint under Bivens against Associate Warden Lindsey, SIS Lieutenant Morin, DHO Emory, and "Unknown Officers." Essentially, Thornton alleges that, while confined to the United States Penitentiary in Lewisburg, Pennsylvania, he was assaulted by staff, that staff issued fabricated incident reports, and that DHO Emory made untrue statements in his disciplinary report.

3. On September 3, 2003, the Court directed service of process. The individual defendants were served with the summons, complaint, and interrogatories, by certified mail, on September 18, 2003. The United States of America was served on September 22, 2003.

4. Under Fed. R. Civ. P. 12(a)(3)(B), an officer or employee sued in his individual capacity is provided sixty days to respond to a properly served complaint. Therefore, defendants have until November 17, 2003, to address the complaint.

5. In order to appropriately respond to Thornton's allegations, the United States Attorney's Office has requested litigative assistance from agency counsel at USP Lewisburg. A litigation report is due from agency counsel on or before November 3, 2003.

6. Under Fed. R. Civ. P. 33(b)(3), answers to interrogatories and any objections thereto shall be served within thirty days after service of the interrogatories. Therefore, defendants have until October 21, 2003 (including three days for mailing under Fed. R. Civ. P. 6(e)) to answer the interrogatories.

7. Presently, the deadline for responding to the interrogatories is earlier than the deadline for agency counsel to complete their investigation and submit their litigation

report. It is also earlier than the deadline for defendants to answer the complaint.

8. Additionally, the individual defendants have not yet been able to complete the procedures necessary to obtain representation by the United States Attorney's office, as set forth in § 50.15, et seq., of Title 28 of the Code of Federal Regulations. Until this process has been completed and representation is authorized by the Civil Division of the Department of Justice, the United States Attorney's Office cannot undertake a full and traditional attorney-client relationship with defendants.

9. Accordingly, for these reasons, defendants request a thirty-day enlargement of time in which to answer and submit objections, if any, to the interrogatories. An enlargement of the deadline will also provide defendants additional time to determine if there are any issues justifying procedural dismissal of the case that would, if granted, obviate the need for any discovery.

10. Defendants submit that plaintiff will not be prejudiced by this enlargement of time as it will allow agency counsel and the undersigned additional time in which to investigate plaintiff's claims and to prepare responses which are thorough and complete in all respects.

WHEREFORE, on behalf of defendants, the United States Attorney's Office requests a enlargement of time until November 20, 2003, to respond to the interrogatories. Counsel certifies that he has not sought the concurrence of plaintiff because plaintiff is a prisoner proceeding pro se. M.D. Pa. Local Rule 7.1.

Respectfully submitted,

THOMAS A. MARINO  
United States Attorney

s/ Stephen R. Cerutti  
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Dated: October 17, 2003

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on October 17, 2003, she served a copy of the attached

DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

Douglas Henry Thornton  
Reg. No. 37461-118  
U.S.P. Allenwood  
P.O. Box 3000  
White Deer, PA 17887

s/ Michele E. Lincalis  
MICHELE E. LINCALIS  
Paralegal Specialist